

original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
Request for Review by)
Verizon/Alltel Management Trust) CC Docket No. 96-45
of Decision of) CC Docket No. 03-109
Universal Service Administrator)

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

ERRATA

This Errata to the non-confidential version of the October 5, 2009 Request for Review by Verizon/Alltel Management Trust of Decision of Universal Service Administrator is being filed to provide the correct page numbers in the Table of Contents and to correct the title of Barbara Bonds, Trust Counsel, on the Cover. No other changes have been made to the Request.

For the convenience of the Commission, five sets of the full non-confidential version of the Request with these corrections are provided herewith.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Timothy A. Harr hereby state that a true copy of the non-confidential version of the foregoing Errata submission was delivered by hand on this 6th day of October 2009, to the following:

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A handwritten signature in black ink, appearing to read "Timothy A. Harr", written over a horizontal line.

Signed

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**REQUEST FOR REVIEW BY VERIZON/ALLTEL MANAGEMENT TRUST OF
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR**

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October 5, 2009

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INTRODUCTION AND STATEMENT OF INTEREST

Pursuant to Rules 54.719 (c), 54.721 and 54.722 of the Federal Communications Commission (“FCC” or “Commission”),¹ the Verizon/Alltel Management Trust (“Alltel” or “the Trust”) for the properties to be divested in connection with the Verizon Wireless acquisition of Alltel², respectfully submits this appeal of four decisions of the Universal Service Administrative Company (“USAC” or “the Administrator”) denying certain

¹ 47 C.F.R. §§ 54.719, 54.721, 54.722.

² As of January 9, 2009 Cellco Partnership d/b/a Verizon Wireless acquired Alltel Corporation and its subsidiaries including Alltel Communications, LLC. In connection with the merger approval, the FCC and the U.S. Department of Justice required Verizon to divest properties in 105 Cellular Market Areas (“CMA”),² which include North Dakota and South Dakota, the location of the Tribal reservations that are the subject of this appeal. An independent Management Trust was created to be responsible for managing these properties until the divestiture occurs, and these comments are being filed by the Management Trust. The Trust does not manage the Texas properties that were covered by the decision of the Universal Service Administrator below, and this filing does not cover those properties.

reimbursements for “Lifeline” support provided by Alltel to eligible residents of Tribal lands in North Dakota and South Dakota in 2007.

Specifically, Alltel urges the Commission to reverse four USAC audit Findings that were adopted and approved by the Administrator. In each case, the Administrator misinterpreted the purpose and misapplied the requirements of the applicable Universal Service Fund (“USF”) statute and rules pertaining to Lifeline support for eligible residents of Tribal lands. In each case, the Lifeline support provided by Alltel promoted the purpose of the USF statute and the important policy goal of the Commission to make telephone service available and affordable to those, predominantly poor, residents living on vast, very sparsely populated rural Tribal reservations, where the access to basic telephone service continues to lag behind the national levels. The Commission should reverse the determinations of the Administrator and rule that Alltel is properly entitled to provide these Lifeline subsidies to Tribal members under the facts described herein and be reimbursed for the Lifeline support that it provided to these eligible residents of Tribal lands in each of these instances. Failure to reverse this USAC decision will undoubtedly result in loss of telephone service to many of the eligible Tribal members who now count on Alltel as their sole communications link.

FINDINGS APPEALED

On August 6, 2009, the Administrator issued a letter to Alltel with the final Results of a 2008 Audit of Alltel's Lifeline and Link-up support for the 2nd Quarter of 2007. The audit covered low income disbursements made by Alltel in the states of North Dakota, South Dakota, and Texas, but the Audit Findings predominantly covered the large Indian reservations in North and South Dakota. This appeal requests that the Commission reverse four of the Findings in those audit results (Findings 2, 3, 4 and 11)³ and clarify the proper application of Lifeline rules in such situations⁴.

The specific findings with respect to which this appeal is taken are as follows:

Finding 2: USAC refused to allow reimbursement of Lifeline discounts provided by Alltel to eligible residents of Tribal lands whose billing addresses were the same as other eligible residents of Tribal lands - - often these billing addresses were Post Office addresses.

Finding 3: USAC refused to allow reimbursement of Lifeline discounts provided by Alltel to Tribal members whose billing addresses (again, often Post Office boxes) were not within the Census map boundaries of the reservation.

³ USAC Findings 2, 3, 4, and 11 are attached as Exhibit 1, 2, 3 and 4.

⁴ Other findings of the Administrator are still in the process of being resolved in ongoing communications between Alltel and USAC. For example, USAC questioned the collection policies of Alltel with respect to delinquent bills of certain Tribal Lifeline subscribers and questioned the level of advertising and promotion of Lifeline programs in some cases. Because these involve ongoing discussions and developments and because they are likely primarily to effect the successor in interest to these properties, which are being divested by Verizon/Alltel to another carrier once such divestiture is approved by the Commission and the Justice Department, these issues are neither ripe for review nor appropriate for resolution by the Trust at this time. Alltel anticipates that the ultimate resolution of these issues will be undertaken by the successor in interest.

Finding 4: While not providing a conclusive recommendation, USAC appears to suggest that Alltel was not entitled to receive reimbursement for customers that were receiving Lifeline from another carrier, even if the customers certified to Alltel that they were not.

Finding 11: USAC found that Alltel should not have received full reimbursement for Tier 4 Lifeline discounts provided by Alltel to eligible residents of Tribal land who selected a Lifeline nationwide local calling plan, because USAC believes this would be subsidizing toll charges.

For the reasons set forth below, we believe that the Administrator erred in finding that the USF rules compelled USAC to reach such determinations, and we urge the Commission to reverse those Findings and clarify that Alltel is entitled to be reimbursed for these discounts provided to customers in an effort to increase telephone service to these underserved reservations.

Alltel is **obligated** to provide Lifeline discounts to all eligible residents of Tribal lands, and Alltel has tried to meet these obligations. Alltel has relied on representations of its customers to determine their eligibility for Lifeline- - the method favored by Commission Rule 54.409 (47 C.F.R. Section 54.409). USAC's Findings would nevertheless deny Lifeline support for many such customers, who would be harmed by the loss of subsidies and by any loss of service that is rendered unaffordable by the USAC Findings.

BACKGROUND

Providing telephone service to far-flung Tribal members living in sparsely populated Indian reservations has long been a national and a Commission priority. Some of these reservations are located in North and South Dakota. Alltel subsidiaries, Western Wireless Corporation and WWC Holding Co., Inc., were designated as eligible telecommunications carriers (“ETC”) in North Dakota⁵, and GCC License Corporation and WWC License LLC were designated in South Dakota⁶ in order to bring service to these eligible residents of Tribal lands. These designations were granted when the companies were subsidiaries of Western Wireless Corporation (“Western”). Alltel acquired Western in August 2005. Since acquiring these Western ETC designated entities, Alltel has through these companies or their successors continued to fulfill the ETC requirements in these states, including the requirement to provide the Tribal Lifeline and Link-Up discounts as they apply to the federally recognized reservations Alltel

⁵ *Western Wireless Corporation Designated Eligible Telecommunications Application*, Case No. PU-1564-98-428, (December 15, 1999) (“*Non-Rural Order*”); *WWC Holding Co., Inc. Designated Eligible Telecommunications Carrier Application*, Case No. PU-2077-03-636, p. 8, (February 12, 2004) (“*Additional Rural Areas Order*”).

⁶ *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Docket No. TC98-146 (October 18, 2001) (“*Rural ETC Order*”); *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Docket No. TC98-146 (October 18, 2001) (“*Non-Rural ETC Order*”); *In the Matter of the Filing By WWC License LLC d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Other Rural Areas*, Docket No. TC03-191 (January 3, 2005) (“*Amended Order*”).

serves, including: Spirit Lake, Turtle Mountain, Pine Ridge,⁷ Crow Creek, Rosebud, Lake Traverse, Yankton, Lower Brule, and Fort Berthold.

The Lifeline and Link-Up programs are designed to ensure that telephone service is affordable to low-income consumers by providing universal service funds to reduce the price that consumers pay for basic telephone service and initial telephone installation. Under the Commission's rules, there are four tiers of federal Lifeline support. All eligible telephone subscribers receive Tier 1 support, which provides a discount of up to \$ 6.50 off of the monthly cost of telephone service for a single telephone line at the subscriber's principal residence. 47 C.F.R. § 54.403(a)(1). Tier 2 support provides an additional \$ 1.75 per month in federal support as long as all relevant state regulatory authorities approve such a reduction. 47 C.F.R. § 54.403(a)(2). Tier 3 support provides an amount equal to one-half of the subscriber's state or carrier-provided Lifeline support, up to a maximum of \$ 1.75. 47 C.F.R. § 54.403(a)(3). Finally, Tier 4 support provides eligible residents of Tribal lands, as defined in section 54.400(e) of the Commission's rules, enhanced Lifeline support of up to \$25.00 in additional discounts off the monthly cost of telephone service. 47 C.F.R. § 54.403(a)(4).

Thus, for the eligible residents of Tribal lands that will be adversely affected by USAC's Findings, the Lifeline program directs the carrier to provide a substantially greater discount on monthly telephone service to help those Tribal members afford

⁷ Alltel has a separate ETC designation from the FCC for the Pine Ridge reservation. At the time of designation, the FCC determined that the South Dakota Public Service Commission did not have the jurisdiction to designate Western Wireless (now Alltel) as an ETC due to a private agreement in place between Western Wireless and the Pine Ridge reservation. *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Released October 5, 2001 in CC Docket 96-45 (FCC 01-283)*.

telephone service. While the Lifeline program was originally designed with the local landline telephone companies in mind, the program has been affirmatively extended by the Commission to cover wireless carriers as well, provided they qualify for the program and undertake to provide Lifeline discounts to individuals who are entitled to them, including Tribal members. The Commission expressed hope that, with such discounts, telephone service could and would be made available to many Tribal members, who, for many practical and legitimate reasons, had never been able to get landline service at their remote locations.⁸

A unique situation exists on Tribal lands and underlies some of USAC's audit Findings: eligible residents of Tribal lands often lack street or residence addresses. As discussed below, it is simply a fact of life on the reservations that relatively few of the eligible residents of Tribal lands have an address associated with their residence, and carriers like Alltel have no practical means of verifying the exact location of the residence of Tribal customers (i.e. on or off the reservation), or whether they reside with other Lifeline subscribers. In many cases, the only address that such customers can provide for billing is a Post Office box or rural general delivery address. Those billing addresses are in many cases shared with several other customers living on the reservation, and thus create the appearance of duplicate Lifeline claims and/or the appearance of not residing on the reservation as discussed below. These Tribal conditions however should

⁸ *In the Matter of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Dkt. No. 96-45. Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, FCC 00-208, 15 FCC Rcd 12208 (2000) ("*Twelfth Report and Order*").

not penalize those eligible residents of Tribal lands and deprive them of Lifeline support that is necessary for their continued use of telecommunications services.

FINDING NO. 2 SHOULD BE REVERSED

USAC Finding No. 2 is that USF Lifeline discounts are not available to eligible residents of Tribal lands who share a common billing address with other Lifeline recipients. USAC reached this result even though: (1) many eligible residents of Tribal lands lack an official residential address, (2) they were informed that they must reside on the reservation in a residence that is not otherwise served by another Lifeline account and represented to Alltel that they meet these qualifications. In support of its Finding, USAC cited *In the Matter of Lifeline and Link-Up*, WC Dkt. No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, 19 FCC Rcd 8302, 8306, ¶4 (2004) (the *Lifeline and Link-up Order*) and 47 C.F.R. §§ 54.401 and 54.403. These sources, however, do not support or require USAC's Finding and denial of support to these recipients that will result in loss of Lifeline support and therefore telephone service to many eligible residents of Tribal lands. This Finding will mean a substantial setback in the progress made in providing basic phone service on the reservations.

A. The FCC Rules and Orders Do Not Support or Require Finding 2

The *Lifeline and Link-up Order* does not support USAC's Finding. Paragraph 4 as cited by USAC indicates that subsidies are applicable to a "single telephone line in their principal residence." (emphasis supplied). The limitation applied by USAC does

not appear in either of the FCC rules cited by USAC. However, even assuming that there is a limitation to “one per principal residence,” this does not require (and the facts in this audit do not support) the result determined by USAC.

The undisputed reality is that in this instance USAC did not find duplicate residential addresses, it found duplicate *billing* addresses. This is not surprising because the challenge which USAC faced in the audit is the same challenge faced by Alltel when it determines eligibility of prospective Tribal customers: residence addresses generally do not exist. The addresses presented by prospective Tribal customers are, in many cases, merely billing addresses in the form of shared Post Office boxes or shared rural route delivery points. As discussed below, these billing addresses are shared with other eligible residents of Tribal lands. Common mailing addresses do not provide any guidance regarding residence location or address of these eligible residents of Tribal lands. Thus, even under USAC’s interpretation - - that duplicate residence address are not allowed to receive Lifeline support - - no adverse conclusion can be reached from examining duplicate billing addresses in such cases.

If USAC relied on the use of “billing address” in 47 C.F.R. 54.307, then it was similarly misled. This section addresses only high cost support and is not applicable. Billing address is the address that is applicable to locating customers for the purpose of determining the amount of high cost support that a carrier will receive per line. It is not applicable or relevant in determining how much Lifeline support an eligible resident of Tribal lands will receive.

As the Commission recognized in the past, and one Commissioner observed in a recent Commission event in South Dakota, there are many challenges to providing

telephone service to Tribal members living on reservations.⁹ One of those challenges is that most of the Tribal members do not reside in neighborhoods laid out on grids or plats with regularly maintained roads and house numbers. In North Dakota and South Dakota, Alltel provides Lifeline and Link-Up discounts to residents of many reservations that in 2007 and 2008 generally had no physical addresses associated with individual residences on the reservations. See Exhibit 5, Letter from Oglala Sioux Tribe, dated November 5, 2007; Letter from Rosebud Sioux Tribe, dated October 19, 2007; Letter from Spirit Lake Tribe, dated December 4, 2007; Letter from Lower Brule Sioux Tribal Planning Director, dated May 21, 2008; Letter from Turtle Mountain Band of Chippewa Indians, dated October 31, 2007; Letter from Sisseton-Wahpeton Oyate (Lake Traverse Reservation), dated July 16, 2008; and Letter from Mandan Hidatsa & Arikara Nation (undated). Thus, while they may live in separate residences, these Tribal customers share Post Office or common rural route deliveries to receive mail, including their wireless bills. See Exhibit 5, page 3, Letter from Spirit Lake Tribe.

⁹ Recently, before he visited one of the reservations involved in this appeal, Commissioner Copps noted the importance of getting modern levels of telecommunications services to those living on the reservations, many of whom lacked even basic phone service. His speech included the following: *"But even as things have changed, a lot still stays the same. Too many places cry out for change, but in too many of them change remains a stranger. Our inner cities, our remote rural areas and, so starkly clear, Indian Country, are not benefiting from the tools and technologies of the Twenty-first century. In Pine Ridge where I will go later today, and in so many other places where Native Americans live, poverty endures, unemployment is at levels no society should accept, education languishes, and even basic public safety falls far short of what people have a right to expect. How far the hopes we shared five years ago have fallen from the tree of reality. Up-to-date communication is still a stranger to most of your lands, and even plain old telephone service is at shockingly low levels of penetration."* Indian Telecommunications Initiative, Remarks of FCC Commissioner Michael J. Copps, , Rapid City, South Dakota, July 28, 2009. (Available on FCC website under speeches of Commissioner Copps)

Alltel is obligated as an ETC to provide Lifeline service to eligible applicants who seek service from Alltel. When an eligible resident of Tribal lands initiates Lifeline and/or Link-Up service with Alltel, he or she is provided various information that outlines the qualifications that he or she must meet in order to qualify for Lifeline support, including but not limited to that only one Lifeline may be provided per residential address or household and that they must reside on Tribal lands. The applicant also completes a Tribal Lifeline and/or Link-Up application form ("application") to receive the discounted service plan. As part of the application, Alltel requests an address for the subscriber. In these North Dakota and South Dakota reservations, more often than not, the only address that Alltel is provided for these Lifeline and Link-Up subscribers is a billing address that, in many instances, is the same Post Office or rural route delivery address provided by other Tribal members. However, in signing the application form, the applicant is representing that he or she qualifies under the Lifeline Tier IV qualification criteria that are applicable for residents of Tribal lands. Relying on the customer to provide this information is the method of eligibility determination selected by the Commission. Alltel requires that each applicant certify under penalty of perjury that he or she qualifies to receive the Lifeline or Link-Up support. (See current application form, attached as Exhibit 6). For these eligible residents of Tribal lands who lack any real residence address, this the most practical method to ensure that Lifeline discounts go only to those who are qualified.¹⁰ Because customer representations of eligibility are the

¹⁰ The only other method for ensuring that an applicant does not reside with someone else who has a supported phone line would be for Alltel to require the potential customer to take an Alltel representative out to his residence, for the representative to do a physical examination of the residence and interrogation of the applicant and perhaps anyone who lived nearby, and confirm the situation and conclusions drawn on the initial inspection.

Commission's approved method and are the best available means for the carrier to determine whether a subscriber is entitled to this Lifeline support, where the customer says he is eligible, USAC should not overrule that assertion on the basis billing address overlaps (i.e. they use the same Post Office box).

B. Failure to Reverse Finding 2 Will Deprive Eligible Residents of Tribal Lands of Lifeline Support and Thus Telecommunications Service

Historically, in its Lifeline and Link-Up reports to USAC, Alltel reported Tribal Lifeline and Link-Up customers even though many of these customers had no official residential address and had provided Alltel the same billing address. Alltel provided these customers the Lifeline and Link-Up discounts. Despite (1) the reality of no residential addresses on the Tribal reservations, (2) Alltel's eligibility verification through its application and certification process and (3) the fact that the customers actually received the Tribal discounts, USAC's is denying this support, which means that Alltel cannot claim reimbursement for any Lifeline recipient who had the same billing address (e.g. Post Office address) as another recipient unless the customer also had a separate official residential address. As demonstrated above, the latter is often impossible as no residence address exists. USAC would deny Alltel reimbursement even if that customer represented that it qualified or even certified that he or she did not share a residence with another Lifeline recipient.

Not only would this be prohibitively time-consuming and expensive, but it would involve a substantial invasion of the privacy of the applicant. We submit that this cannot be what the Commission would require, and the alternative of simply refusing service to any Tribe member without a formal residence address would cut off a huge portion of the Tribe from telephone service.

Even though it is not currently being reimbursed the subsidy, Alltel has continued to provide the subsidy to the eligible residents of Tribal lands. However, because most of these reservation residents have nothing other than the common billing address they provided in the application, unless USAC's determination is reversed, it will make telephone service unaffordable to such recipients, whom the USF program was clearly designed to support.¹¹ To ensure that these eligible Lifeline participants continue to receive telecommunications services at the discounted rates to which they are entitled and which Alltel is obligated to provide as an ETC, Alltel respectfully requests that the Commission reverse the Administrator's Finding.

C. Commission Policy Supports Continued Telephone Service to Eligible Residents of Tribal Lands.

The Lifeline program is understood to provide low-income consumers with discounts off the monthly cost of telephone service for generally only a single telephone line at their principal place of residence. *See In the Matter of Federal-State Joint Board on Universal Service*, CC-Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957, ¶. 341 (1997) ("*Universal Service Order*"); *In the Matter of Lifeline and Link-Up*, CC-Docket No.03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, 19 FCC Rcd 8302, 8306, ¶. 4 (2004). And Alltel is not advocating that it be

¹¹ Realistically, Alltel is faced with two alternatives: (1) stop providing the discounted services to these eligible Lifeline and Link-Up recipients per USAC's position; or (2) continue providing the discounted services without any USF reimbursement. Alltel currently has chosen the latter approach and, as a result, is no longer reporting many lines for subsidy purposes even though Alltel presently provides Tribal members the discounted service – a discount Alltel is providing at its own expense. Because Alltel cannot realistically be expected to continue to provide these steeply discounted services in high-cost Tribal areas without USF reimbursement, the USAC directive places a number of eligible Lifeline and Link-Up recipients at risk of losing the critical USF support for which they should be qualified under the Commission's rules.

allowed to provide more than one Lifeline to an identical individual household .

However, Alltel's practice of providing Tier 4 Lifeline services to eligible residents of Tribal lands reporting the same billing address if the applicant has completed the application and certification process representing that he or she is eligible with the understanding that such eligibility requires that he or she does not live in a household that already has a Lifeline, serves the public interest because it ensures that the reality of living on a reservation without a physical address does not conflict with the requirements or the purpose of the Lifeline program.

The Commission recognized in its Twelfth Report and Order that Tribal members face significant obstacles to accessing telecommunications services, including significantly lower-than-average incomes and subscribership levels on Tribal lands.¹² Thus, in recognition of these hardships, the Commission concluded that additional measures designed to increase subscribership and improve access to telecommunications service were necessary for Tribal members.¹³ However, USAC's extrapolation of the "one per residence" rule as allowing only "one per billing address" even when the applicant lacks a residential address to provide and has represented that he qualifies, is in stark contrast to the Commission's conclusions in the Twelfth Report and Order, ignores the realities of life on Tribal lands and reservations, and frustrates the Commission's goals by denying eligible Tribal members access to these critical USF programs.

¹² *In the Matter of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Dkt. No. 96-45. Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, FCC 00-208, 15 FCC Rcd 12208 (2000) ("Twelfth Report and Order").

¹³ *Id.*

Because the Administrator misapplied the Commission's rules and guidance in this case, by creating a restriction that would deny USF support to qualified Tribal members living in different residences, the Commission should reverse that Finding. This Commission action would not expand the Lifeline and Link-Up programs to consumers who are not otherwise qualified for the support. Rather, it would simply ensure that all eligible Tribal applicants are provided Lifeline and Link-Up support. Customer certifications are not only the Commission's approved method of determining eligibility, but are a reasonable and practical process for a carrier to determine that the Lifeline and Link-Up discounts were and are only applied to a single telephone line at the subscriber's primary place of residence as contemplated by the Commission.¹⁴

Therefore, to ensure that these eligible residents of tribal lands continue to benefit from these important programs, the Commission should reverse USAC's conclusion in Finding 2, and authorize Lifeline reimbursement for eligible customers residing on Tribal lands without formal residence address who have represented that they meet the qualifications of residing separately on the reservation. USAC's Finding will deprive Tribal members of the discounts that are necessary to fulfill the purpose of the Lifeline and Link-Up programs. A reversal of USAC's ruling is in the public interest because it

¹⁴ There are, of course, ancillary questions about the meaning of "residence" and its application to multi-family dwellings, rooming arrangements, group homes, and so forth on Indian reservations. This is one of the reasons that any requirement of a physical inspection by Alltel would end up being so intrusive and expensive. One primary goal of the Lifeline program is to allow everyone to have a phone that they can use to call 911 or a doctor, or connect with important commercial, educational, or other entities. Given the remote and individualistic living conditions of many Tribal members, this goal can only be achieved if a phone is available to the Tribe member when other Tribe members living in the same compound are not around. Thus, with respect to wireless phones, erring on the side of providing more rather than fewer adults with the financial support to acquire wireless service best promotes the goals of the program.

would further the FCC's goals of improving access to telecommunications services on Tribal lands.

FINDING NO. 3 SHOULD BE REVERSED

USAC Finding No. 3, would deny Lifeline benefits to those eligible residents of Tribal lands whose billing address USAC found to be outside of Tribal lands based on its use of Census maps, and even though the eligible resident of Tribal lands certified that his actual residence was on the reservation. At minimum, the Commission should instruct USAC that Lifeline support is available for any eligible Tribal member (1) whose registered billing address appears to be within the Bureau of Indian Affairs estimates of the reservation boundaries (the Commission's preferred basis for reservation location determination; see *Twelfth Report and Order* at paras. 18 and 19) of any of the reservations Alltel serves in North Dakota and South Dakota, or (2) whose Post Office address or other billing address is outside the reservation boundaries but who does in fact meet the qualification for Lifeline, including residing on the reservation. If the Administrator's conclusion is allowed to stand, it will cut off supported telephone service to eligible residents of Tribal lands.

In the vast reaches of North and South Dakota, the true footprint of the Indian reservations is often difficult to discern, and may be subject to a certain degree of debate locally and officially. The universal service program was designed to provide assistance to Tribal members in obtaining telephone service, and clearly not to exclude eligible residents of Tribal lands who believe and represent to Alltel that they constructed or settled their home within the reservation, particularly where the Bureau of Indian Affairs agrees with them. Furthermore, as discussed above, many Tribal members living on a reservation have no formal address associated with their residence and therefore use as a billing address a location (such as a Post Office or common rural route delivery) which may or may not be outside of the reservation, but which clearly does not establish the location of their residence.

A. FCC Rules and Policy Do Not Support USAC's Finding

Section 54.400(e) defines an eligible resident of Tribal lands as "a 'qualifying low-income consumer', , , living on or near a reservation." 47 C.F.R. § 54.400(e). The term "reservation" means "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, . . . and Indian allotments." *Id.* The term "near reservation" is described as lands adjacent or contiguous to reservations and that generally have been considered Tribal lands for purposes of other federal programs targeted to federally-recognized Indian tribes. *Id.* While on August 31, 2000, the Commission stayed implementation of enhanced Lifeline and Link-Up benefits with

respect to qualifying low-income consumers living near a reservation.¹⁵ It acknowledged that many who live adjacent to the official boundaries of the reservation are likely qualified and appropriate to receive Lifeline support.¹⁶ The Commission also acknowledged the imprecision of determining the location of eligible residents of Tribal lands and the unfairness of strict application of the rules by granting waivers of Section 54.400(e). *In the Matter of Federal-State Joint Board On Universal Service; Smith Bagley, Inc., Petition for Waiver of Section 54.400(e) of the Commission's Rules*, FCC 05-7701, 20 FCC Rcd 7701 (2005) and *In the Matter of Sacred Wind Communications, Inc. and Qwest Corporation; Joint Petition for Waiver for the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Sacred Wind Communications, Inc.; Related Waivers of Parts 36, 54 and 69 of the Commission's Rules*, 21 FCC Rcd 9227 (2006). The Commission recognized that strict application of the rule ignores the lifestyle and housing realities faced by Tribal members (and the carriers who serve them) and would deprive many Tribal members of the Lifeline and

¹⁵ *In the Matter of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Dkt. No. 96-45. Order and Further Notice of Proposed Rulemaking, FCC 00-332, 15 FCC Rcd 17112 (2000)

¹⁶ The Commission concluded that the definition of "near reservation" may include wide geographic areas that do not possess the characteristics that warrant the targeting of enhanced Lifeline and Link-Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership. *Id.* At the same time, the Commission opened a rulemaking, which is still pending, on how best to identify geographic areas that are adjacent to reservations, consistent with the goal of targeting enhanced Lifeline and Link-Up discounts to the most underserved areas of the nation. *See In the Matter of Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, FCC 03-115, 18 FCC Rcd 10958 (2003). In the meantime, however, the Commission has recognized the need to provide Tier 4 support to Tribal members living near - rather than on - a reservation and has thus waived the "on reservation" requirement when requested.

Link-Up discount even though they are otherwise eligible. Contrary to the FCC's preference evidenced by these waivers for assuring Lifeline is available to Tribal members, in the present situation, USAC presumed they are not on Tribal lands and would deny them Lifeline and LinkUp benefits merely because their mail delivery service may be off the reservation, even though the customers represented to Alltel that they were qualified for Lifeline, knowing that the qualifications include that they live on the reservation. USAC clearly ignored the FCC preference for assuring service to Tribal members in favor of a different and harsh presumption.

As previously discussed, FCC rules and orders do not specify that a customer's residence or qualification is determined based on the location of his *mailing* address. It is simply irrelevant whether his mailing address is located on or off the reservation. Again, as described above, when a customer applies for Lifeline service, he is briefed on or provided with materials that describe the qualifications including that he must reside on Tribal lands. It is also significant, but was ignored by USAC, that these eligible residents of Tribal lands generally apply for service in Alltel retail locations that are established on the reservations or that predominately serve Tribal members. It is therefore more than reasonable for Alltel to recognize that these are residents of Tribal lands and to provide them the Tribal discounts. Alltel's practice that endeavored to help all eligible residents of Tribal lands should be favored rather than rejected by USAC.

B. USAC's Finding Will Deny Lifeline Benefits and Thus Telephone Service to Eligible Residents of Tribal Lands

As is the case with respect to Finding 2, if USAC Finding 3 is not reversed, then many eligible residents of Tribal Lands will be deprived of Lifeline benefits and lose service as it becomes unaffordable. Despite USAC's recommendation, Alltel has continued to provide Lifeline benefits to those eligible residents of Tribal lands that were receiving the benefits prior to USAC's recommendation. Alltel cannot realistically be expected to continue those discounts if USAC's Finding is not reversed. These eligible residents of Tribal lands will therefore lose essential support that has made telecommunications services affordable. The actual penetration of telecommunications services in Tribal areas will decrease. This is clearly contrary to FCC policy and the intent of the USF program.

It is not practical or feasible for Alltel to physically travel out to determine precisely where these subscribers actually reside or for customers to otherwise prove their eligibility, and it is certainly not possible retroactively. The Commission likely understood this when it adopted qualification procedures that rely on customer certifications that they are eligible. The Commission should instruct the Administrator that Alltel is permitted to report to USAC those subscribers with billing addresses that are located beyond the reservation, but who applied for service representing that they meet the qualifications for the Tribal Lifeline program .

As set forth above, this is also an area where the Commission has previously granted waivers, concluding that restrictive and narrow application is not appropriate where there is substantial evidence that the customer is, for all meaningful intents and purposes, living as a member of the reservation. Where there is good reason to conclude that the customer does live on the reservation, as there is here, the Commission should